

The Honorable Julie A. Spector
February 18, 2005
10:00 a.m.

**SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY**

MICHAEL PARSONS, RANDOLPH
GETCHMAN, and GLADYS
BARKER, incapacitated persons by and
through their co-guardians, JAMES R.
HARDMAN and ALICE L.
HARDMAN; FRIENDS OF
FIRCREST, a Washington not for profit
corporation; WASHINGTON
FEDERATION OF STATE
EMPLOYEES,

Plaintiffs,

v.

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES, and DENNIS
BRADDOCK, Secretary of Social and
Health Services, in his official capacity,

Defendants.

NO. 03-2-12424-9 SEA

DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND
MEMORANDUM IN SUPPORT
THEREOF

I. RELIEF REQUESTED

Plaintiffs have voluntarily dismissed three of the five claims set forth in their Petition for Declaratory & Injunctive Relief, leaving only the claim that the Legislature's direction to downsize Fircrest School violates Article II, sections 19 and 37 of the Washington

1 Constitution. Plaintiff Washington Federation of State Employees (WFSE) does not have
2 standing to pursue the remaining claims. Moreover, the Court has already rejected those
3 claims. Accordingly, Defendants move for summary judgment dismissing Plaintiffs' petition
4 with prejudice.

5 **II. STATEMENT OF FACTS**

6 **A. Introduction**

7 Defendant/Respondent Department of Social Health Services (DSHS or the
8 Department), through its Division of Developmental Disabilities (DDD), operates five state
9 residential rehabilitation centers (RHCs) for persons with developmental disabilities. One of
10 those institutions, Fircrest School, is located in Shoreline and at one time housed as many as
11 900 residents. In recent years, due to the increased desire for and availability of community
12 placements for DDD clients, the population at Fircrest steadily decreased to approximately
13 250 residents, and in 2003 the State Legislature directed DSHS to consolidate vacancies in the
14 RHCs and further reduce the Fircrest population by approximately 23%.

15 Plaintiffs oppose the Department's implementation of the legislative direction, and filed
16 the underlying action to block the transfer of residents from Fircrest to other RHCs. They
17 mischaracterize the limited reduction in capacity at Fircrest as a "closure" of the facility, and
18 based on this mischaracterization they claim that the budget language modifies substantive law
19 and is therefore unconstitutional.

20 **B. Procedural History**

21 Plaintiffs filed the instant action in December 2003 alleging *inter alia* that certain
22 language in the 2003-05 biennial budget directing the downsizing of Fircrest School violates
23 Article II, sections 19 and 37 of the Washington Constitution.¹ Petition For Declaratory &

24 ¹ Article II, section 19 provides that "[n]o bill shall embrace more than one subject, and that shall be
25 expressed in the title." Article II, section 37 provides that "[n]o act shall ever be revised or amended by mere
reference to its title, but the act revised or the Section amended shall be set forth at full length."

1 Injunctive Relief at p. 6, Part III, ¶¶ 1 and 2.² In January 2004 they filed Plaintiffs’ Motion and
2 Memorandum of Law in Support of Partial Summary Judgment (Wash. Const. Article II,
3 section 19 and Article II, section 37). In that motion, they argued that the legislative language
4 directing the downsizing of Fircrest School violated sections 19 and 37, and that the
5 Department’s downsizing of Fircrest was *ultra vires*.

6 This Court heard oral argument and subsequently denied Plaintiffs’ motion for partial
7 summary judgment. The Court’s ruling began with a general description of the factual and
8 historical context in which the case arose, particularly noting that the general trend nationwide
9 and in the state of Washington has been to deinstitutionalize individuals with developmental
10 disabilities, noting that the legislative action at issue is consistent with that recent trend. As to
11 the legal issue, the Court concluded that “plaintiffs’ argument that the budget acts violated the
12 two-subject prohibition under the State constitution under Article II, sections 19 and 37 fails.”
13 Order on Plaintiffs’ Motion for Summary Judgment at p. 6. The Court further rejected
14 Plaintiffs’ argument that the legislative direction constituted a “closure” of Fircrest:

15 This is not about the closure of Fircrest, nor is it about the reduction of services
16 provided to the developmentally disabled. While plaintiffs argue that the
17 downsizing and the prospective closing of Fircrest (after 2005) are two subjects
18 and therefore, violative of Article II, section 19; only the downsizing was to be
19 implemented during the current biennium while closure is to occur in subsequent
20 bienniums. This is a critical distinction and does not in and of itself violate the
two-subject prohibition under the state Constitution. Plaintiffs insist however,
that the implementation of downsizing and contemplation of closure after 2005
somehow violates the two-subject rule. The legislature’s discussion and
prospective intention of closing Fircrest after 2005 does not rise to a
Constitutional affront.

21 *Id.* at pp. 6-7.

22 The Court also rejected Plaintiffs’ argument that the legislative language violated
23 Article II, section 19 by amending substantive law in a budget bill, noting that Plaintiffs “have

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25 ² A copy of the petition is attached as Appendix A to this brief. The claims asserted in Counts 3, 4, and 5
of the Petition have been voluntarily dismissed by the Plaintiffs and accordingly are not addressed in this motion.

1 been unable to present authority to demonstrate that the bill effects [sic] existing law.” *Id.* at
2 p. 7.³ Moreover, the Court concluded that even without the legislative language, “[t]he plan
3 proposed by DSHS [to implement the downsizing] and under attack by the plaintiffs has been
4 and is well within the authority of the Secretary to determine both the increase or decrease of
5 residential capacities within the state’s RHCs.” *Id.* at p. 8. Plaintiffs’ motion was denied “on
6 all grounds.”

7 **C. The Legislative Language At Issue**

8 Plaintiffs challenge focuses on three sections of the 2003-2005 state operating budget
9 passed by the 2003 Legislature and signed into law by the Governor. The budget bill,
10 Chapter 25, Laws of 2003 1st Ex. Sess., was enacted as Engrossed Substitute Senate Bill 5404,
11 entitled as follows:

12 AN ACT Relating to fiscal matters; . . . making appropriations; and
13 declaring an emergency.

14 The main purpose of the legislation was to make appropriations for the 2003-05
15 biennium. Many of the appropriation sections included provisions giving legislative directions
16 to state agencies regarding some or all of the amounts appropriated. They include the
17 following:

18 Section 136, which appropriates funding for the State Investment Board and provides
19 that:

20 The appropriations in this section are subject to the following conditions
21 and limitations: \$100,000 of the general fund--state appropriation for fiscal year
22 2004 is provided solely for a contract with a real estate investment consultant to
23 prepare options and recommended investment strategies for surplus property at
the five state residential habilitation centers, where the proceeds will be deposited
into an account to fund services for developmentally disabled clients. In
developing the recommended strategies for the Fircrest school property, the

24 ³ Although the Court did not explicitly refer to Article II, section 37, this statement refutes Plaintiffs’
25 argument that the budget language violates that section. If no substantive law is amended, there is nothing to be
“set forth at full length.”

1 contractor shall identify an investment strategy that will produce a long-term
2 investment return on the property, without sale of the land. The report shall be
submitted to the appropriate committees of the legislature by December 1, 2003.

3 Section 206, which appropriates operating funds for the DSHS Aging and Adult

4 Services Program and provides, *inter alia*, that:

5 (7) \$118,000 of the general fund--state appropriation for fiscal year 2004,
6 \$118,000 of the general fund--state appropriation for fiscal year 2005, and
7 \$236,000 of the general fund--federal appropriation are provided solely for the
department to assess at least annually each elderly resident residing in residential
8 habilitation centers and state-operated living alternatives to determine if the
resident can be more appropriately served in a less restrictive setting.

9 Section 211, which appropriates funds for the DSHS Administrative and Support

10 Services Program and provides, *inter alia*, that:

11 (1) \$467,000 of the general fund--state appropriation for fiscal year 2004,
12 \$769,000 of the general fund--state appropriation for fiscal year 2005, and
13 \$1,236,000 of the general fund--federal appropriation are provided solely
for transition costs associated with the downsizing effort at Fircrest
14 school. The department shall organize the downsizing effort so as to
minimize disruption to clients, employees, and the developmental
15 disabilities program. The employees responsible for the downsizing effort
shall report to the assistant secretary of the aging and disability services
administration. Within the funds provided in this subsection, the
department shall:

- 16 (a) Determine appropriate ways to maximize federal reimbursement
17 during the downsizing process;
- 18 (b) Meet and confer with representatives of affected employees on
19 how to assist employees who need help to relocate to other state
20 jobs or to transition to private sector positions;
- 21 (c) Review opportunities for state employees to continue caring for
22 clients by assisting them in developing privately operated
community residential alternatives. In conducting the review, the
23 department will examine efforts in this area pursued by other states
as part of institutional downsizing efforts;
- 24 (d) Keep appropriate committees of the legislature apprised, through
25 regular reports and periodic e-mail updates, of the development of
and revisions to the work plan regarding this downsizing effort;
and
- (e) Provide a preliminary transition plan to the fiscal and policy
committees of the legislature by January 1, 2004. The transition

1 plan shall include recommendations on ways to continue to
2 provide some of the licensed professional services offered at
Fircrest school to clients being served in community settings.⁴

3
4 **III. STATEMENT OF ISSUE**

5 Whether the provisions of the 2003 State Budget, which direct DSHS to implement a
6 limited reduction (approximately 23%) in Fircrest's population, violate Article II, section 19 or
7 Article II, section 37 of the Washington Constitution.

8 **IV. EVIDENCE RELIED UPON**

9 In support of their Motion for Summary Judgment, Defendants rely on the following
10 evidence previously filed with the Court:

- 11 1. Declaration of Kathy Leitch, dated February 17, 2004.
- 12 2. Declaration of Asha Singh, M.D., dated February 17, 2004.
- 13 3. Declaration of Ellis Wade Hitzing, Ph.D., dated February 16, 2004.
- 14 4. Declaration of Linda Rolfe, dated February 18, 2004.
- 15 5. Second Declaration of Asha Singh, M.D., dated February 18, 2004.
- 16 6. Declaration of John Forbes, dated February 18, 2004.
- 17 7. Declaration of Maureen Underwood, dated February 18, 2004.

18 In addition, Defendants rely on the legal arguments set forth in the Defendants'
19 Opposition To Motion For Partial Summary Judgment submitted on February 17, 2004 and
20 Defendants' Opposition To Motion To Stay submitted on February 18, 2004; the analysis and
21 conclusions set forth in the Court's Order On Plaintiff's Motion For Summary Judgment; and
22 the following points and authorities.

23
24 ⁴ In their initial pleading, Plaintiffs incorrectly ascribe the requirement to provide a transition plan to
25 § 205 of the bill. See Petition For Declaratory & Injunctive Relief at p. 4, Part II, ¶ 6. However, it was clear from
the context that they were in reality challenging § 211.

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V. ARGUMENT

A. The Claims of Plaintiff WFSE Should Be Dismissed For Lack Of Standing

The Uniform Declaratory Judgments Act, RCW 7.24, outlines the standing requisite to seek relief under its provisions:

A person . . . whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

RCW 7.24.020. The Washington Supreme Court recently articulated the application of the UDJA's standing requirement in cases such as this one:

To establish harm under the UDJA, a party must present a justiciable controversy based on allegations of harm personal to the party that are substantial rather than speculative or abstract. *Walker v. Munro*, 124 Wn.2d 402, 411, 879 P.2d 920 (1994). This statutory right is clarified by the common law doctrine of standing, which prohibits a litigant from raising another's legal right. "The kernel of the standing doctrine is that one who is not adversely affected by a statute may not question its validity." *Id.* at 419.

Grant Cty. Fire Prot. Dist. No. 5 v. City of Moses Lake, 150 Wn.2d 791, 802, 83 P.3d 419 (2004). The *Grant County* Court went on to explain:

This court has established a two-part test to determine standing under the UDJA. The first part of the test asks whether the interest sought to be protected is " 'arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.' " *Save a Valuable Env't v. City of Bothell*, 89 Wn.2d 862, 866, 576 P.2d 401 (1978) (quoting *Ass'n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 152-53, 90 S. Ct. 827, 25 L. Ed. 2d 184 (1970)). The second part of the test considers whether the challenged action has caused " 'injury in fact,' " economic or otherwise, to the party seeking standing. *Id.* at 866. Both tests must be met by the party seeking standing.

Id. at 802.

There is no question that all Plaintiffs meet the first prong of this two-part test, as the constitutional provisions in question—sections 19 and 37 of Article II—were designed to protect *all* of the citizenry from ill-considered votes by legislators where either (1) the vote was the result of "logrolling" (combining two bills when neither would pass on its own merits,

1 or where one bill that is unlikely to pass is attached to a popular bill) (the double section rule of
2 section 19) or (2) the full import of the vote was not apparent from the face of the bill (the
3 double subject provision of section 19 and the requirement of section 37 that amendments of
4 substantive provisions be set forth in full).

5 However, Plaintiff WFSE does not meet the second prong of the two-part test because
6 any injury suffered by it and/or the employees that it represents is at best “speculative or
7 abstract.” First, except for the now-dismissed claim that the budget proviso impairs the
8 collective bargaining agreement between DSHS and WFSE, there is no assertion in the Petition
9 filed by Plaintiffs alleging that WFSE will be harmed by enactment of the budget language.
10 Second, much of the downsizing at Fircrest is to be accomplished through the consolidation of
11 vacancies among all of the RHCs operated by DSHS. Because DSHS’s employees at all of the
12 RHCs are represented to the same degree by the WFSE as are employees at Fircrest, it is
13 speculative at best whether the enactment of the budget proviso would have any adverse affect
14 on either WFSE or its members.⁵ Accordingly, WFSE’s claims regarding Article II,
15 sections 19 and 37 should be dismissed for lack of standing.

16 **B. The Facts and Authorities Submitted by Defendants In Support of Their Motion**
17 **Meet the Standards for Summary Judgment**

18 The purpose of summary judgment is to avoid unnecessary trials. *Firth v. Lu*,
19 103 Wn. App. 267, 278, 12 P.3d 618 (2000). Summary judgment is granted if it appears from
20 the record that there are no genuine issues of material fact and the moving party is entitled to
21 judgment as a matter of law. Civil Rule 56(c); *Fraternal Order of Eagles, Tenino Aerie*

22
23 ⁵ Because the two constitutional provisions apply directly only to the legislative enactment process, any
24 challenge to a particular piece of legislation as violative of those sections must be limited to the four corners of
25 the legislation. *See, e.g. Wash. Fed’n of State Employees v. State*, 127 Wn.2d 544, 551-557, 901 P.2d 1028 (1995)
(discussing application of Article II, section 19 by focusing only on the language of the statute being challenged).
Thus, in this case the question is not whether in fact implementation of the act actually affected the federation or
its members, but rather whether it is apparent that the statute on its face requires such a result.

1 *No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224, 253, 59 P.3d 655
2 (2002). A material fact is one upon which the outcome of the litigation depends. *Samis Land*
3 *Co. v. City of Soap Lake*, 143 Wn.2d 798, 803, 23 P.3d 477.

4 A defendant has two ways of moving for summary judgment. *Guile v. Ballard*
5 *Community Hosp.*, 70 Wn. App. 18, 21, 851 P.2d 689 (1993). First, a party can set out the
6 material facts and demonstrate that there is no genuine issue as to those facts. *Id.* The material
7 facts in this case, already determined by this Court in its Order on Plaintiff's Motion for
8 Summary Judgment and thus no longer in dispute, are that no decision has been reached at this
9 time to close Fircrest School, and that no reduction in services has been experienced by
10 Plaintiffs. Order at p. 6, ll. 5-6; 20-21. Thus Defendants' motion meets the first standard for
11 summary judgment.

12 Alternatively, parties moving for summary judgment can meet their burden by
13 demonstrating to the trial court that the nonmoving party lacks sufficient evidence to support
14 its case. *Guile* at 21. When a defendant moves for summary judgment under this alternative
15 method, the following burdens are imposed:

16 A defendant in a civil action is entitled to summary judgment when that party
17 shows that there is an absence of evidence supporting an element essential to
18 the plaintiff's claim. The defendant may support the motion by merely
19 challenging the sufficiency of the plaintiff's evidence as to any such material
20 issue. In response the nonmoving party may not rely on the allegations in the
21 pleadings but must set forth specific facts by affidavit or otherwise that show a
22 genuine issue exists. Additionally, any such affidavit must be based on personal
23 knowledge admissible at trial and not merely on conclusory allegations,
24 speculative statements or argumentative assertions.

21 *Las v. Yellow Front Stores*, 66 Wn. App. 196, 198, 831 P.2d 744 (1992) (footnotes omitted).
22 Plaintiffs rely entirely on speculative and conclusory factual assertions regarding the state's
23 intentions to downsize Fircrest, and regarding alleged reductions in services and eventual harm
24 to residents transferred from Fircrest to equivalent institutions or, at their option, to
25 community-based programs. This Court previously and correctly concluded that no decision

1 has been made to close Fircrest. Order at p. 6, ll. 17-21. The Court also observed that
2 "...there are no experts who have provided declarations to support the plaintiffs' bald
3 assertions that their wards will be injured or harmed or are even being deprived of state
4 support," Order at p. 9, ll. 6-8. Thus Defendants' current motion meets the standards and
5 burdens for this alternative basis for summary judgment.

6 Even in cases where a genuine issue of material fact is alleged to exist, summary
7 judgment may still be granted. "[W]hen reasonable minds could reach but one conclusion,
8 questions of fact may be determined as a matter of law". *Ruff v. County of King*,
9 125 Wn.2d 697, 703-04, 887 P.2d 886 (1995) (quoting *Hartley v. State*, 103 Wn.2d 768, 775,
10 698 P.2d 77 (1985)). Material facts are those upon which the outcome of the action depends.
11 A plaintiff cannot rely on allegations in the pleadings or assertions, but must present competent
12 evidence by affidavit or otherwise. If the plaintiff fails to make such a showing, there is no
13 genuine issue of fact as to the essential element in question and the trial court should grant the
14 defendant's motion for summary judgment. Absent proof of an essential element of the
15 plaintiff's case, all other facts are immaterial. *Ames v. City of Fircrest*, 71 Wn. App. 284, 290,
16 857 P.2d 1083 (1993).

17 Under these principles, and based on the facts presented to the Court by the parties in
18 this litigation, there is no competent evidence to support Plaintiffs' bald assertions and
19 unsupported allegations. Defendants have demonstrated a right to summary judgment as a
20 matter of law.

21 **C. The 2003 Budget Enacted By The State Legislature Violates Neither Article II,**
22 **Section 19 Nor Article II, Section 37 Of The State Constitution**

23 The Washington Supreme Court has articulated the proper analytical approach to
24 resolving Plaintiffs' claim that the 2003-05 appropriations bill violates Article II, Section 19:
25

1 An appropriations bill violates section 19 if it defines rights or alters
2 existing laws. *Serv. Employees Int'l Union, Local 6 v. Superintendent of Pub.*
3 *Instruction*, 104 Wn.2d 344, 351, 705 P.2d 776 (1985). . . [there are] three
4 indicators that a part of a budget bill may be substantive law: (1) it has been
5 treated in a separate substantive bill in the past, (2) its duration extends beyond
6 the two-year time period of the budget, and (3) the policy defines rights or
7 eligibility for services.

8 *Retired Public Employees Council of Washington v. Charles*, 148 Wn.2d 602, 629, 62 P.3d 470
9 (2003), citing *Wash. State Legislature v. State*, 139 Wn.2d 129, 145, 985 P.2d 353 (1999).
10 None of those indicators are present in this case.⁶

11 Plaintiffs have identified no statute that has been amended by this budgetary language.
12 The resident capacity or population to be served in state RHCs has never been quantified or
13 codified in state law, and in reality has routinely changed year after year. Thus, there is no
14 historical basis for concluding that such issues have been “treated in a separate substantive bill
15 in the past.” To the contrary, as discussed more fully below, the Legislature has delegated to
16 the Secretary of DSHS broad authority to manage the state’s DDD programs and facilities,
17 authority which includes determining the residential capacity of state institutions as well as the
18 assignment of individual recipients of its residential services to particular institutions. Thus, if
19 anything, the challenged language complements, rather than amends, existing substantive law.

20 Second, the effect of the challenged legislative language is limited to the current
21 biennium. Contrary to the Plaintiffs’ assertions, the challenged language does not mandate
22 Fircrest’s closure in this biennium or for that matter in any future biennium. Subsequent
23 legislatures may choose to once again expand the resident capacity of Fircrest or other RHCs.
24 While Plaintiffs argue that language in the current appropriations act and its implementation by
25 DSHS foretells a future decision to close the facility, the Supreme Court has pointed out that

⁶ This test is described in terms of the single subject rule of Article II, section 19. However, in this case
it also leads to the conclusion that Article II, section 37 is not offended. If, as Defendants contend, the
appropriations act does not amend substantive law, then there is no “revised act or amended section [to] be set
forth in full length” and thus no violation of the latter provision.

1 “the appropriate inquiry is whether the changes [in law] extend beyond the two-year time
2 period of the budget, not whether there may be ‘impacts’ beyond the budget period.” *Ret’d*
3 *Pub. Employees*, 148 Wn.2d at 630. The Legislature could easily reverse its current direction
4 and provide for an increase in Fircrest population during the ensuing biennium. Thus the effect
5 of the challenged legislative language is limited to the current biennium.

6 Finally, the challenged legislative provisions do not define rights or eligibility for
7 services. Plaintiffs have cited no provision of substantive law giving any individual recipient
8 of institutional services a right to reside in a particular facility, for the simple reason that no
9 such right exists. Those individuals who may be transferred from Fircrest will go to other
10 RHCs, where they will continue to be eligible for and receive the same set of services they had
11 received at Fircrest. Only if current Fircrest residents choose to move to community settings
12 would the nature of the services received be different. While the challenged legislative
13 language provides funding to facilitate such options, it does not mandate that choice, and
14 eligibility standards for those who choose to receive institutional services remains unchanged.

15 Plaintiffs argue that the failure of the Legislature to enact Engrossed Senate Bill 5971
16 during the 2003 legislative session somehow vitiates the legislative budget language. That bill,
17 had it been enacted, would have directed the closure of Fircrest School, something that the
18 budget language indisputably does not do. A court seeking to understand legislative intent
19 may consider sequential drafts of a bill that has been enacted. *Spokane County Health Dist. v.*
20 *Brockett*, 120 Wn.2d 140, 153, 839 P.2d 324 (1992). However, when a particular piece of
21 legislation does not pass, the Court has been reluctant to “speculate as to the reason for the
22 rejection.” *Id.* See also, *Roberts v. Dudley*, 140 Wn.2d 58, 69 n.10, 993 P.2d 901 (2000)
23 (concluding that the only inference to be drawn from the legislative failure to enact a particular
24 piece of legislation is that the legislature decided against its enactment.) In this instance, that
25 would mean that the Legislature decided not to direct the closure of Fircrest School during the

1 2003-05 biennium. The legislature’s decision not to enact ESB 5971 simply provides no
2 support for Plaintiffs’ arguments.

3 Further, regardless of the budgetary language, existing substantive law vests the
4 Secretary of DSHS with the authority and responsibility to determine the capacity of RHCs and
5 the other institutions managed by DSHS. RCW 72.01.050; 72.01.090. More importantly, as to
6 the provision of services to residents at state RHCs operated by DSHS, the Legislature has
7 delegated to the Secretary not only the “custody of all residents” but also “control of the
8 medical, educational, therapeutic, and dietetic treatment of all residents,”
9 RCW 71A.20.050. Thus, even without the legislative budgetary direction, the Secretary’s
10 authority is plainly broad enough to determine the institution in which residential services will
11 be provided, as well as the residential capacities of those institutions.

12 At its heart, Plaintiffs’ arguments regarding alleged violations of Article II, sections 19
13 and 37 are predicated on the untenable assertion that the reduction in the resident population of
14 Fircrest was actually a “closure” of Fircrest, and that because the “closure” was included in the
15 2003 Appropriations Act, it violated the single subject rule of the Washington Constitution,
16 Article II, Section 19, Article II, Section 37 and thus was prohibited. As the quotation on p. 3
17 *supra* demonstrates, despite Plaintiffs’ erroneous characterizations and references to “de facto
18 closure” of Fircrest, the Court has already recognized that this case does not involve closure of
19 Fircrest at all.

20 This Court has also rejected Plaintiffs’ argument that the legislature’s direction violated
21 Article II, sections 19 and 37 by amending substantive law in a budget bill, noting that
22 Plaintiffs “have been unable to present authority to demonstrate that the bill effects [sic]
23 existing law.” Order on Plaintiffs’ Motion for Summary Judgment at p. 7. Moreover, the
24 Court concluded that even without the legislative language, “[t]he plan proposed by DSHS [to
25 implement the downsizing] and under attack by the plaintiffs has been and is well within the

1 authority of the Secretary to determine both the increase or decrease of residential capacities
2 within the state's RHCs." *Id.* at p. 8.

3 In short, Plaintiffs' constitutional claims under Article II simply cannot withstand
4 scrutiny. What this case really concerns - management of facilities and services for
5 developmentally disabled persons - is a matter well within the properly exercised authority of
6 the Legislature and DSHS.

7 **VI. CONCLUSION**

8 For the reasons set forth above, Defendants request that summary judgment be granted
9 in their favor on all issues remaining issues, and that Plaintiffs' petition be dismissed, with
10 prejudice.

11 DATED this _____ day of _____, 2005.

12 CHRISTINE O. GREGOIRE
13 Attorney General

14
15 _____
16 William L. Williams, WSBA No. 6474
17 Senior Assistant Attorney General

18 _____
19 Edward J. Dee, WSBA No. 15964
20 Assistant Attorney General
21 Attorneys for Defendants
22
23
24
25

1 **PROOF OF SERVICE**

2 *Jeffrey S. Nelson*, states and declares as follows:

3 I am a citizen of the United States of America and over the age of 18 years and I am
4 competent to testify to the matters set forth herein. I certify that I served a copy of this
5 DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN
6 SUPPORT THEREOF on all parties or their counsel of record on the date below as follows:

7 **Counsel for Plaintiffs Hardman**
8 **and Friends of Fircrest**

9 Michael L. Johnson
10 Hardman & Johnson
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12 Suite 200
13 Seattle, WA 98104

14 ☒ By United States Mail
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☐ By Hand Delivery by: _____

15 **Counsel for Plaintiffs Hardman**
16 **and Friends of Fircrest**

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 3rd day of January, 2005, at Olympia, Washington.

JEFFREY S. NELSON
Legal Assistant II